IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 409 of 2003

MANI RAM & ANR
V/S
MOHANLAL & ORS

Mr. AK RAJVANSHY, for the appellant / petitioner

Mr. GR GOYAL]
Mr. RR NAGORI] for the respondent

Date of Order : 17.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for consideration of stay petition. However, at the request of all the learned counsel for the parties, the matter was finally heard at this stage itself, as the contesting respondents No.1 and 2 are represented, while the respondents No.3 and 4 are supporting respondents of the appellants.

By the impugned order, the learned trial Court has decided issue No.4 as a preliminary issue, and held the suit to be bad for mis-joinder of parties and causes of action, and has found, that two separate suits should have been filed. In view of this finding, the trial Court has ordered the suit to be returned to the plaintiff, with liberty to elect, as to, against which appellant, he wants to continue the suit, and a further liberty to file the separate suits.

The circumstances in which controversy arises are, that the plaintiff-appellants filed the suit for specific performance of the contract dated 5.1.96, on 5.1.98, alleging inter-alia, that after entering into that agreement, the defendant No.1 has executed a sale-deed of the property in question in favour of defendant No.2 on 11.11.97, and therefore, the suit was filed for specific performance of the contract dated 5.1.96, and at the same time, for declaring the sale-deed executed in favour of the defendant No.2 to be void.

Learned trial Court has found, that cancellation or declaration of the sale-deed dated 11.11.97 to be void, and specific performance of the contract dated 5.1.96, are two distinct causes of actions, for which suit can be filed against distinct persons, and therefore, the suit is bad for multifariousness.

Learned counsel for the respondents were asked, as to how do they support the impugned order, as in my view the relief of declaration of the subsequent sale-deed to be void, is an integral part of, and consequence of, the plaintiff's entitlement to relief of specific performance of the agreement in his favour, but then, learned counsels could not satisfy, as to how the impugned order can be sustained.

In that view of the matter, the appeal is allowed. The impugned order is set aside, the finding of the learned trial Court on issue No.4 is reversed, and the learned trial Court is directed to proceed with the trial of the suit, and decide it on merits, and in accordance with law, and expeditiously.

(N P GUPTA),J.

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